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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,449	03/06/2007	Franciscus Wilhelmus Cornelis den Ouden	5916-061197	3432

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EXAMINER
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LATHAM, SAEEDA MONEE

ART UNIT	PAPER NUMBER
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1789

NOTIFICATION DATE	DELIVERY MODE
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03/18/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@webblaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,449	<b>Applicant(s)</b> DEN OUDEN ET AL.	
	<b>Examiner</b> Saeeda Latham	<b>Art Unit</b> 1789	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 19 December 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-36 is/are pending in the application.  
     4a) Of the above claim(s) 22-30,35 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-21, 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The amendment to the claims filed on 12/29/2010 has been entered. Claims 17-36 are currently pending in this application, wherein claims 22-30, 35, 36 are withdrawn from consideration. The previous objection of the specification is withdrawn in view of applicant's amended specification. The previous rejection of claim 17 under 112 2<sup>nd</sup> paragraph is withdrawn in view of applicant's amended claims.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 17-20, 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruff et al, USPN 5358970.**

4. Regarding claims 17, 18, 32, 33, Ruff teaches adding a stabilizer to bupropion hydrochloride such as glycine hydrochloride (column 1, lines 41, 42, 66). The stabilizer is used to make pharmaceutical solid dosage formulation in amount preferably about 5% to 16.2% (column 2, lines 5-8).

5. Regarding claims 19, 20, 34, Ruff teaches the manufactured formulation containing glycine hydrochloride, wherein the powder ingredients were weighed out. In the process the granules were dried [considered to contain no water] (see Example 4).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**7. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruff et al, USPN 5358970.**

8. Claim 31 relates to a flavoring composition comprising at least 10% glycine hydrochloride. Ruff teaches adding a stabilizer to bupropion hydrochloride such as glycine hydrochloride (column 1, lines 41, 42, 66). The stabilizer is used to make pharmaceutical solid dosage formulation in amount preferably about 5% to 16.2% (column 2, lines 5-8).

9. Ruff does not specifically teach at least 10% glycine hydrochloride. It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected at least 10% to 16.2% because of the overlapping range.

**10. Claims 17-21, 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gusman et al, USPN 3903255.**

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**11.** Claims 17, 18, 31-33 relates to a flavoring composition. Gusman teaches an effervescent potassium chloride tablet which comprises an amino acid hydrochloride (abstract). When dissolved in water, gives a tangy, acidic flavor and helps mask taste of potassium chloride (column 2, lines 39-42). The amino acid hydrochloride may be primary amino acids, which include glycine (column 4, line 33-35).

**12.** Gusman does not specifically teach at least 5% or at least 10% glycine hydrochloride. Since Gusman uses this as a chloride source (column 2, lines 33-35), it would have been obvious to one having ordinary skill in the art at the time of the invention to have achieved at least 5% or at least 10% depending on the degree of tangy, acidic flavor desired to compliment the potassium source.

**13.** Claims 19 and 34 relates to less than 20 wt% water, and less than 10wt% water, respectively. In the absence of the teaching, it is understood that the claim limitation is met.

**14.** Claim 20 relates to a free-flowing powder. Gusman teaches grinding and granulating the mixed powders (see Example 1).

**15.** Claim 21 relates to further components. Gusman teaches flavoring (see Example 1).

**16. Claims 17-21, 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldscher USPN 4163803.**

**17.** Claims 17, 31 and 32 relates to a flavoring composition. Goldscher teaches reducing the undesirable bitterness of curcumin-containing turmeric by the addition of glycine, which may be in the form of glycine hydrochloride (column 1, lines, 6-8, 66-

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column 2, line 1). Any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, if desired (column 2, lines 14-16). The composition is used to color or flavor a food or beverage (see Claim 1).

18. Goldscher does not teach at least 5% or at least 10% by weight dry matter of glycine hydrochloride or a turmeric component. Since Goldscher teaches the composition is used to color or flavor a food or beverage comprises turmeric and glycine to substantially reduce or eliminate bitter taste (see Claim 1) and any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, if desired (column 2, lines 14-16), it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amount at least 5% or at least 10% by weight dry matter of glycine hydrochloride or a turmeric component depending on the degree of reduction or elimination of bitter taste desired in the final food product.

19. Claims 18 and 33 relates to less than 2% turmeric and less than 1% turmeric, respectively. Since any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, if desired (column 2, lines 14-16), it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amount less than 2% turmeric by weight dry matter depending on the degree of reduction or elimination of bitter taste desired in the final food product.

20. Claims 19 and 34 relates to less than 20 wt% water, and less than 10wt% water, respectively. In the absence of the teaching, it is understood that the claim limitation is met.

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21. Claim 20 relates to a free flowing powder. Goldscher teaches spray dried turmeric and purified powder turmeric (see Example I). Goldscher claimed method involved homogenously blending the glycine with turmeric (see Claim 8). It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized powder turmeric and made a blend of turmeric and glycine as Goldscher and further selected the glycine component in a conventional form such as powder that would effectively produce a homogenous powder that would be easily added to food products.

22. Claim 21 relates to at least 10% by weight of dry matter selected from yeast lysates, processed flavors and topnotes. Goldscher teaches in one embodiment, the turmeric and glycine is added to a white frosting mix [considered a processed flavor] (see Example III). It would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at amount of at least 10% by weight of dry matter of white frosting mix to achieve the desired amount of flavor and color in the final food product.

### ***Response to Arguments***

23. Applicant's arguments filed 12/29/2010 have been fully considered but they are not persuasive. Applicant argues Exhibit A describes the salt-like seasoning agent of glycine hydrochloride and does not mention the organoleptic property of glycine or its sweet taste. Therefore, there is nothing in Goldscher that would satisfy this requirement

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and one of ordinary skill would not use the glycine hydrochloride form to mask bitter taste.

24. In response to applicant's argument, applicant is reminded that Goldscher teaches reducing the undesirable bitterness of curcumin-containing turmeric by the addition of glycine, which is reduced to the point of virtually undetectable bitterness (column 1, lines, 6-8, 50, 51). Glycine exists in many forms, one of which is glycine hydrochloride (column 1, lines, 6-8, 66- column 2, line 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized Goldscher teaching to use glycine to mask bitter taste and have chosen the glycine form as glycine hydrochloride. Additionally, the affidavit, exhibit A, Shiga teaches the salty taste of glycine hydrochloride this is not found persuasive, since Shiga does not teach its interaction with turmeric.

25. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., organoleptic property of glycine or its sweet taste) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

26. Applicant argues that it would not be obvious to one skilled in the art to arrive at a flavoring composition having relative high amounts of glycine hydrochloride and optionally turmeric defined in the claims based solely on Goldscher.



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27. In response to applicant's argument, applicant is reminded that Goldscher teaches any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, with adjustments if necessary to give the desired results (column 2, lines 14-16). Goldscher further teaches the ratios of glycine to turmeric are varied with specific food systems used by first adding the turmeric to get a desired color intensity and then adding glycine to reduce the bitterness to the desired level (column 2, lines 3-6). Goldscher additionally teaches the user should be careful to use enough glycine in proportion to turmeric to be sure to prevent the bitter taste from presenting itself (column 2, lines 9-11). Goldscher emphasizes the need to vary the amounts of glycine and turmeric, therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amount at least 5% or at least 10% by weight dry matter of glycine hydrochloride or a turmeric component depending on the degree of reduction or elimination of bitter taste in the final food product to reach a desired level and result.

### ***Conclusion***

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

29. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

32. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 1789

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1782